



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-1070

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114607.

The City of Houston (the "city") received a request for information concerning incident report number 043602897 involving the requestor. Specifically, the requestor seeks copies of polygraph tests and results. In response to the request, you submitted to this office for review the information which you assert is responsive. You state that the "Police Department will make available to the requestor the Public Release Information portion of the requested incident report."¹ However, you assert that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

First, we address your assertion that section 552.101 of the Government Code excepts the requested "examination results of the polygraph given to the requestor's employee." Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas law prohibits the public disclosure of the report and results of a polygraph examiner's examination. V.T.C.S. art. 4413(29cc). However, we note that article 4413(29cc) provides that the examinee of a polygraph examination has a special right of access to the results of

¹As you have noted, basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. See Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

his or her polygraph examination. V.T.C.S. art. 4413(29cc), § 19A(c)(1). In this instance, the request is for the polygraph test results of the requestor and another named individual. The city is barred from releasing the *results* of the polygraph examinations to anyone except as specifically provided by section 19A of article 4413(29cc), V.T.C.S. *See also* Open Records Decision No. 430 (1985). We conclude, therefore, that the requestor is entitled to a copy of polygraph examiner's report concerning the requestor, however, the polygraph results for the other named individual must be withheld from public disclosure to the requestor by virtue of section 19A of article 4413(29cc) of the Code of Criminal Procedure.²

Next, we address whether section 552.108 of the Government Code excepts some of the submitted information, not covered by section 552.101, from required public disclosure. Section 552.108 of the Government Code, the "law enforcement" exception, reads as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

²Although you have raised section 552.108 of the Government Code as an exception to disclosure for the polygraph examination results, the Open Records Act's exceptions do not, as a general rule, apply when the release of information is expressly controlled by other statutes. Open Records Decision No. 525 (1989) at 3.

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1). We note that in this instance, you advise this office that "HPD considers this case inactive at this time, but will reopen in the event more information becomes available to the investigators." Further, the submitted information also indicates that no charges have been filed in connection with the investigation at issue. Based on the submitted arguments and documents, we do not believe that the information may be withheld under section 552.108(a)(1).

Section 552.108(a)(2) provides that information is excepted from disclosure if "it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." The city asserts that "[b]ecause no suspect has been arrested, the investigation has not resulted in a conviction or deferred adjudication." Based on your representations, we believe that the submitted records deal with the detection and investigation of a possible crime. Since the completed investigation did not result in a conviction or deferred adjudication, we conclude that the city has shown the applicability of section 552.108(a)(2) to the submitted information.³

³We note, however, that you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 114607

Enclosures: Submitted documents

cc: Ms. Cynthia Hypolite
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Houston, Texas 77083
(w/o enclosures)